



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08832/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**Heard on 8th of May 2017
Prepared on 10th of May 2017**

on 26th of May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR AKHTAR SAEED
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jaffar of Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 31st of March 1986. He appeals against a decision of Judge of the First-tier Tribunal Paul sitting at Taylor House on 11th of January 2017 who dismissed the Appellant's appeal against a decision of the Respondent dated 7th of August 2016. That decision was to refuse to grant the Appellant asylum.

2. The Appellant arrived in the United Kingdom on a student visa valid until 30th of October 2013. He then made a number of applications all of which were refused by the Respondent. On 30th of October 2013 he applied for Tier 4 leave which was refused on 10 December 2013. In January 2014, he again applied for Tier 4 leave to remain which was rejected on 28th of March 2014. He then repeated this application which was refused with no right of appeal on 8th April 2014. On 11th of May 2015, he applied for an EEA residence card but this was rejected on 26th of June 2015. The application was repeated on 16th of July 2015 and again rejected this time on 10th of December 2015. On 20th of January 2016 he was arrested by the police for immigration offences and claimed asylum on 12th of February 2016. It was the refusal of that claim for asylum which has given rise to the present proceedings.

The Appellant's Case

3. The Appellant claimed to be at risk upon return to Pakistan because he had had some form of friendship with his female cousin and her immediate family objected to this. They attacked him co-opting the local police into ill treatment of the Appellant. These events occurred in or about 2009 before the Appellant came to the United Kingdom. The Judge noted the inconsistencies in the Appellant's account for example that he was attacked in October 2009, alternatively December 2009 and by his cousin and 3 police officers alternatively 6 men with 3 police officers. He had been hit with a hockey stick alternatively a scaffolding pole. The cousin had fired at him with an AK-47 automatic rifle alternatively only one shot was fired. The Appellant was able to escape from the roof which separated the houses of the 2 families because his father was in the middle which was why he the Appellant was not shot. He was unable to explain how the place had fled to had been located. He had been found in that in a house alternatively by the side of the road.

The Decision at First Instance

4. At paragraphs 25 onwards the Judge dealt with the credibility issue in the case. The Appellant had waited nearly 5 years before making his asylum application. He had argued that the delay was because he the Appellant did not know the asylum procedure but it was clear from the Appellant's history of applications that the Appellant was well aware of immigration procedures and that he had rapidly developed a facility for the making of applications. The Judge found no good reason for the late application for asylum which thus undermined the Appellant's credibility.
5. Although the Appellant had produced witness statements none of the makers had given any direct evidence (that is from their own knowledge) as to what had happened to the Appellant. The documents were mostly in the form of depositions from friends who had helped the Appellant in 2009 and were accompanied by translations. The depositions were briefly

summarised at paragraphs 6 to 9 of the determination. The Judge also referred to a deed of renunciation made by the Appellant's father which was attached to the depositions. This complained that the Appellant had disgraced the family honour by developing relations with a daughter of the father's brother. The documents were submitted at the time of the Appellant's asylum interview 6 months after the Appellant had made his initial claim for asylum. The purpose of the renunciation by the Appellant's father was to make it plain the state of family affairs.

6. Having dealt with the section 8 point (delay in claiming) and the lack of direct evidence the Judge gave his conclusions on the documents at paragraph 28 saying that they had been put together for the purposes of the appeal and made several years after the event. They could not be relied on and adopting the principles of **Tanveer Ahmed** [2002] UKAIT 439 he placed no weight on the documents. At paragraph 29 the Judge considered the Appellant's answers in the course of cross-examination at the hearing before him. The answers were evasive, vague and unhelpful. The Appellant's excuses were in the Judge's view conclusive proof the Appellant was not giving a truthful account. The Judge finally came to the view at paragraph 30 that no such incident as complained of by the Appellant had ever taken place and there was no risk of persecution if the Appellant were to be returned to Pakistan. He dismissed the appeal.

The Onward Appeal

7. The Appellant appealed against that decision on three grounds arguing firstly that the Judge had failed to give adequate reasons why he rejected the Appellant's evidence. Secondly the Judge had taken the wrong approach by placing no weight on the documents produced by the Appellant. If the Appellant's documents had no weight why should his passport have been considered genuine or his visa application or his nationality? The 3rd ground was that citizens were bound in Pakistan to follow the law but in some areas the authorities would not take any legal action against honour killing which would pose a risk for the Appellant upon return.
8. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Baker on 8th of November 2017. In refusing permission to appeal she found that the Judge had given adequate reasons for rejecting the Appellant's account. The background material had been noted by the Judge but it was not necessary to specify elements of it. He plainly had taken it into account and there was no arguable error of law in rejecting the whole account of the Appellant. The Judge correctly identified the standard of proof and applied the principles of **Tanveer Ahmed** in relation to the documents. The issue of internal relocation (to avoid the threat of honour killing) was not material in the light of the Judge's adverse credibility findings.

9. The Appellant renewed his application for permission to appeal to the Upper Tribunal concentrating on the documentary side of matters. The grounds complained that the Judge had said the documents submitted were made several years after the event but that could not be proved. I pause to note that this is a strange submission since the depositions and the deed of renunciation were all dated. Continuing, the grounds argued that the documents were strong evidence which had not been given due consideration by the Judge. In finding the Appellant's statement to be evasive with discrepancies the Judge failed to appreciate that the Appellant had made his statement 7 years after the events. The Appellant had lived in the United Kingdom since 2013 and had adapted to British culture and life. He had invested a lot of money and time to study in this country and make his career.
10. The renewed application came before Upper Tribunal Judge Chalkley who granted permission to appeal finding it properly arguable that the Judge *may* [his emphasis] have misapplied *Tanveer Ahmed* at paragraph 28 of the determination (see paragraph 6 above) the Upper Tribunal Judge granted permission on that issue only. In response to the grant of permission, the Respondent wrote to the Upper Tribunal on 13th of April 2017 pursuant to rule 24 saying that paragraph 28 needed to be read together with the other paragraphs of the determination at 25 to 29. The Judge had considered all of the Appellant's evidence in the round and none in isolation before coming to the decision directing himself appropriately.

The Hearing Before Me

11. At the hearing before me the Appellant was represented by counsel who relied on his skeleton argument which stated that the First-tier had given two reasons for rejecting the Appellant's documentary evidence: the timing of the claim and that the evidence was not contemporaneous but hearsay. Both section 8 and the doctrine in *Tanveer Ahmed* required a global assessment of all the evidence. In this case there was crucial evidence in the form of a corroborative medical report but the Judge made no findings on that. Even if the statements had been made several years afterwards, the Tribunal was not bound by strict rules of evidence and was entitled to have regard not only to direct witness evidence but an array of other statements and documents. The correct approach to determine a materiality of error of law was that even if the Tribunal had not made the error as to the credibility of the Appellant would it inevitably have reached the same conclusion?
12. In oral submissions counsel argued that the Judge should have carried out a global assessment of all of the evidence. The Appellant's strongest point was this failure to make such a global assessment. The medical evidence showed that the injuries, cigarette burns on the left upper arm, were consistent with the Appellant's account of torture.

13. For the Respondent, the Presenting Officer argued that the Judge had to start somewhere when setting out his findings. The immigration history was the logical place to start. There had been a 5 year delay in claiming. The documents, depositions before the Notary Public, were then put together but they could not be relied upon. All the Judge was saying was that they were made so long after the event he could not place weight on them. The Judge also considered the Appellant's demeanour when giving evidence and he was not satisfied that the Appellant had given him a truthful account. Finally in reply counsel argued that the Judge had not taken account of all of the evidence.

Findings

14. For the hearing before the Judge at first instance the Appellant had filed a 57-page bundle as well as a skeleton argument. In so far as it is relevant the bundle consisted of a statement of the Appellant dated 6th of January 2017 and a series of exhibits at pages 36 to 57 of the bundle. These were as described by the Judge, a number of depositions made before a notary public on 27th of July 2016 with English translation, the deed of renunciation and photocopies of the identity cards of the persons making the depositions.
15. The Judge was not obliged to accept the veracity of the documentary evidence but in the event that that evidence was rejected, which in this case it was, the Judge was obliged to give reasons why he rejected the evidence. The Judge was concerned about two aspects of the documents in particular. The first was that the statements had been made approximately 6 years after the events in question and the 2nd aspect was that for the most part the statements makers repeated what they had been told by the Appellant as opposed to what they knew from their own knowledge.
16. It is fair to say that the Judge's treatment of the documentary evidence was concise. He could for example in the case of the affidavit made by Mohammed Tariq query why the maker of that affidavit had said that the Appellant's attackers had a deep influence in a political party without saying what political party that was meant to be (particularly as the Judge was aware the Appellant claimed to fear the Pakistan Muslim League). That the Judge did not go into that level of detail is not of itself a criticism as long as it is clear that the Judge did take into account all relevant matters and gave adequate reasons for his decisions.
17. It is well established that a Judge is not obliged to set out each and every piece of evidence in a case. The Judge's treatment of the statements is located in the middle of his conclusion section on credibility. I do not interpret paragraph 27 as being a rejection of the documents per se but rather that the Judge was indicating he could give little weight to them because they were not direct evidence that the witnesses themselves had observed. As the witnesses' evidence was based on what they had

been told by the Appellant their evidence was only as good as the Appellant's evidence. If the Appellant was an unreliable witness then unless in July 2016 it could be said that he had had a sudden rush of reliability there was little weight that could be placed on what he had told his witnesses to say in their statements.

18. The Judge noted the reference to Tanveer Ahmed in the refusal letter at paragraph 22 thereof in which the Respondent stated that the effect of Tanveer Ahmed was that it was for the Appellant to show the documents he relied on to support his case could indeed be relied upon. The Respondent did not simply dismiss the documents at that point but went on to say at paragraph 24 of the refusal letter that Home Office contacts in Rawalpindi stated that an affidavit had to be backed up by a police report and registered in court. The stamp paper was available for purchase from the court and for an additional fee a person could get this notarised without it being read. As the Appellant had not filed a case with the police the Respondent placed little weight on the documents which were described as subjective and self-serving.
19. To a certain extent all evidence presented by a party is self-serving but what it appears the Respondent means in this context is as the Judge put it that the documents had been put together for the purposes of this appeal rather than some form of contemporaneous account of matters for example to assist a police investigation. It is not entirely clear from the permission to appeal what the Upper Tribunal's criticism of the Judge's application of Tanveer Ahmed is. The Judge was adopting the (legally correct) reasoning contained in the refusal letter. Furthermore, the Judge was not viewing the documents in isolation. As was submitted to me the Judge had to set out his conclusions in some form of order which meant making an analysis of parts of the evidence before making an analysis of the remainder. It did not mean he was jumping to conclusions before making his overall conclusions. I find that the Judge did indeed consider the evidence in the round as can be seen from the order in which he took the evidence.
20. Importantly, the documents were not found by the Judge to be impressive and it is difficult to argue with that assessment. The plain fact of the matter was they were made several years later and not contemporaneous to the events thus they relied heavily on what the Appellant had told the witnesses before they made the depositions. The Appellant was himself an unreliable witness, the documents produced simply did not take the case any further.
21. The renunciation document is also an unimpressive document. Leaving aside the Respondent's complaint that the document was a copy only what clearly concerned the Judge was that this document too was made 7 years after the events. Why would the Appellant's father make such a declaration so many years after what had happened particularly as the deed of renunciation itself refers to "from today onwards [the Appellant]

shall be responsible for his acts and deeds”? The documents simply raised far too many questions to be a reliable piece of evidence. I do not find therefore that there has been any error of law material or otherwise in the way that the Judge has dealt with this case or in the determination. The evidence project presented by the Appellant was unreliable.

22. Whilst the Appellant produced a medical report showing that he had marks on him, the best that that medical report could do was to say that the marks were consistent with the Appellant’s account. They could have been consistent with any number of other explanations. The burden was on the Appellant to show that his explanation was the correct one. The Judge did not find the Appellant to be a credible witness and did not accept the credibility of the Appellant’s complaints, see paragraph 30 of the determination. The appeal before me is no more than a disagreement with the result. The Appellant was an unreliable witness and the Judge rejected the Appellant’s evidence and gave cogent reasons why documentation produced to support the Appellant’s case undermined it rather than the reverse.
23. The Appellant had substantially delayed his claim for asylum and could give no good reason for that delay. The series of applications made by the appellant belied his claim not to know how to claim asylum as the Judge pointed out. The delay in claiming also fed into the delay in making the statements further undermining their reliability.
24. Although the Appellant’s onward grounds of appeal make reference to the time he spent in the United Kingdom, no mention of any claim under Article 8 was made in the skeleton argument submitted to the Judge at first instance nor from reading the determination does it appear that any submissions were made in relation to Article 8 at the hearing. No submissions were made to me in relation to Article 8. This must be right, the appellant had been in the United Kingdom without leave for a number of years while he made a series of meritless applications. It is difficult to see on what basis the appellant could have argued that he should be granted leave to remain under Article 8 outside the Immigration Rules. No such argument was made at first instance and therefore did not fall to be dealt with in the Judge’s determination. I dismiss the Appellant’s appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant’s appeal

Appellant’s appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 10th day of May 2017

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 10th day of May 2017

.....
Judge Woodcraft
Deputy Upper Tribunal Judge